

FCC MAIL ROOM

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Aug 1 3 42 PM '05

DISTRICT

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MB Docket No. 05-245  
Table of Allotments, ) RM-11264  
FM Broadcast Stations. )  
(Sierra Vista and Tanque Verde, Arizona) )  
 )  
 )

## NOTICE OF PROPOSED RULEMAKING

Adopted: July 27, 2005

Released: July 29, 2005

Comment Date: September 19, 2005

Reply Comment Date: October 4, 2005

By the Assistant Chief, Audio Division, Media Bureau

1. The Audio Division has before it a Petition for Rule Making filed by CCR-Sierra Vista IV, LLC ("Petitioner"), licensee of FM Station KZMK, Channel 265A, Sierra Vista, Arizona, proposing the reallocation of Channel 265A from Sierra Vista to Tanque Verde, Arizona, as its first local service and modification of the FM Station KZMK(FM) license accordingly. Petitioner stated its intentions to file an application for FM Station KZMK at Tanque Verde, Arizona, if reallocated.

2. Petitioner proposes the reallocation of Channel 265A from Sierra Vista to Tanque Verde, Arizona, as its first local service and modification of the FM Station KZMK license accordingly. In support of its proposal, Petitioner states that Tanque Verde is a Census Designated Place ("CDP") located in Pima County with a 2000 U.S. Census population of 16,195 persons. A U.S. Census designation of an area as a CDP raises the presumption that an area is a "community" for allotment purposes, that presumption is rebuttable.<sup>1</sup> Petitioner must submit additional information demonstrating that Tanque Verde is a "community" for allotment purposes. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, public service, or religious organizations and services in the community.<sup>2</sup>

2. Petitioner filed its reallocation request pursuant to Section 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed

<sup>1</sup> See *Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

<sup>2</sup> See *Hayfield, VA*, 12 FCC Rcd 16373 (M.M. Bur 1997) and *Kenansville, Florida*, 5 FCC Rcd 2663 (M.M. Bur 1990), *aff'd*, 10 FCC Rcd 9831(1995).

allotment.<sup>3</sup> The proposed reallocation of Channel 265A at Tanque Verde is mutually exclusive with the current authorized facilities of FM Station KZMK, Channel 265A, Sierra Vista, Arizona.

3. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.<sup>4</sup> In this regard, the proposed Channel 265A reallocation at Tanque Verde would provide a first local service, priority (3), whereas the retention of FM Station KZMK at Sierra Vista would attribute to a fourth local service, priority (4).<sup>5</sup> As such, the reallocation proposal results in a preferential arrangement of allotments based on priority (3), first local service.

4. Petitioner states that the proposed Tanque Verde reallocation would produce a net gain of 581,750 persons. 61,185 persons reside in the loss area. However, the loss area is considered well-served because it would continue to receive at least five aural services. Petitioner further states that Tanque Verde is not located in an urbanized area, but the proposed Tanque Verde reallocation would cover 8.6 percent of the Tucson Urbanized Area. In this instance, a *Tuck* showing is not required because the proposed reallocation would not cover more than fifty percent of the urbanized area.<sup>6</sup>

6. We find that the reallocation proposal warrants consideration because it could serve the public interest by providing the community of Tanque Verde with a first local service. A staff engineering analysis has determined that Channel 265A can be allotted to Tanque Verde in conformity with the Commission's rules, provided there is a site restriction of 9.2 kilometers (5.7 miles) north at reference coordinates 32-19-59 NL and 110-45-19 WL. Tanque Verde is located within 320 kilometers (199 miles) of the U.S.-Mexican border and the proposed reallocation is short-spaced to Mexican vacant Channel 266B, Sasabe, SO by 3.1 kilometers.<sup>7</sup> As such, Mexican concurrence for this proposed reallocation has been requested as a specially negotiated short-spaced limited allotment. In accordance with the provisions of Section 1.420(i) of the Commission's rules, we shall not accept competing expressions of interest pertaining to the use of Channel 265A at Tanque Verde.

7. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel Number</u>		
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Sierra Vista, Arizona	265A, 269A	269A
Tanque Verde, Arizona	-----	265A

<sup>3</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7394 (1990).

<sup>4</sup> The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1988).

<sup>5</sup> AM Stations KTAN, KNXN and FM commercial Station KKYZ continue to be licensed to Sierra Vista.

<sup>6</sup> See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (MMB 1995) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*").

<sup>7</sup> The allotments are 121.9 kilometers apart. The minimum spacing distance is 125 kilometers.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

9. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 19, 2005, and reply comments on or before October 4, 2005, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Howard M. Liberman, Esq.  
Elizabeth A. Hammond, Esq.  
Counsel for CCR-Sierra Vista IV, LLC  
Drinker Biddle & Reath LLP  
1500 K Street, NW, Suite 1100  
Washington, DC 20005

10. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>8</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

12. For further information concerning a proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the

<sup>8</sup> See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W., Washington, D.C.